



THIRTEENTH ANNUAL REPORT

OF

THE DEPARTMENT OF JUSTICE

FOR

PRINCE EDWARD ISLAND

1985

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TO:

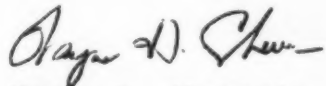
THE HONOURABLE LLOYD G. MACPHAIL
Lieutenant Governor
Province of Prince Edward Island

May It Please Your Honour:

I have the honour to submit the thirteenth Annual Report
of the Department of Justice for this province.

I have the honour to be, Sir,

Your obedient servant,

A handwritten signature in dark ink, appearing to read "Wayne D. Cheverie". The signature is fluid and cursive, with a horizontal line at the end.

Wayne D. Cheverie, Q.C.
Minister of Justice and
Attorney General

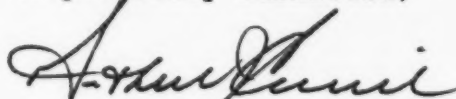
TO:

THE HONOURABLE WAYNE D. CHEVERIE, Q.C.
Minister of Justice and Attorney General
Province of Prince Edward Island

Sir:

I am pleased to submit herewith the Annual Report of the
Department of Justice for the year ending 31 December 1985.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Arthur J. Currie', written in a cursive style.

Arthur J. Currie
Deputy Minister of Justice

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INTRODUCTION

The untimely passing in 1985 of Chief Justice John P. Nicholson has left a void in the legal profession and the judiciary of this province which will be difficult to fill. Chief Justice Nicholson contributed much to the legal community of this province and was active in many worthwhile community endeavors. He will be remembered for the courtesy with which he treated all persons who appeared before him and for the firm, fair and straightforward manner in which he ran his court.

Chief Judge Norman H. Carruthers of the Provincial Court was elevated to the position of Chief Justice of the Supreme Court replacing the late Chief Justice Nicholson. His appointment continued the long line of learned persons to serve the province in the position of Chief Justice.

To replace Chief Justice Carruthers on the bench of the Provincial Court the Lieutenant Governor In Council appointed Ralph C. Thompson, formerly Director of Legal Services, Department of Justice, as Chief Judge.

Mr. Charles P. Thompson of the Department of Justice was appointed to the position of Director of Legal Services.

The reports of the divisions of the Department contained in this report have been prepared by the Directors of the divisions and amalgamated into the report of the Department. The report of the Commanding Officer, "L" Division R.C.M.P. will be tabled in the House as a separate report.

DEPARTMENTAL DIVISIONS

1. Administration
2. Corporations
3. Consumer Services
4. Insurance
5. Legal Services
6. Crown Attorneys
7. Corrections
8. Legislative Counsel
9. Charlottetown and Summerside Registry Offices
10. Public Defender
11. Family Legal Aid
12. Probation, Family Court and Young Offenders Services
13. Judicial

In addition to the Department of Justice, the Minister is responsible for the Liquor Control Commission, the Human Rights Commission and the Public Utilities Commission.

CORPORATIONS DIVISION

Acts Administered

The Corporations Division of the Department of Justice is responsible for the following Acts:

- Companies Act
- Condominium Act
- Co-operative Associations Act
- Corporation Securities Registration Act
- Credit Union Act
- Licensing Act
- Limited Partnerships Act
- Partnership Act
- Securities Act
- Winding Up Act

Companies Act Statistics

Following are statistics which pertain to the various statutes administered by the Corporations Division:

	1985	1984
- Incorporations during the year		
Business Corporations	281	223
Not-for-profit corporations	27	25
Total new corporations	<u>308</u>	<u>248</u>
- Certificates of good standing under the Companies Act and Licencing Act	150	115
- Annual returns filed under section 80 of the Companies Act	3,420	1,481

The number of incorporations during 1985 increased 24% over the previous year. Most of the other filings under the Act were about the same as they were in 1984, except for annual return filings which increased 171% over the previous year. This increase is due to the campaign by the Department to have all companies bring their records up to date.

Companies Act Revisions

The 1984 amendments to the Companies Act were proclaimed effective January 1, 1985. These amendments have modernized substantially company law in the province and have been well received by the legal and business community.

Business and Corporate Names Policy

A new business and corporate names policy was brought into effect on December 1, 1985. All business and corporate names are now searched by computer before being cleared for registration. There are three levels of name search available and the top level involves a computer comparison of a proposed business name against all business and corporate names and all trademarks in Canada. The effect of this is that the public will have better information before making a final decision on the registration of a business name in this province.

Co-operative Association Act

There are some fifty active co-operatives in the Province and those are reported on separately in the Annual Report of the Inspector of Co-operatives, which is also tabled in the Legislature.

During 1985 there were 10 new co-operatives incorporated whereas 3 were incorporated in 1984.

Corporations Division staff continue to work closely with co-operatives, especially through the Co-operative Union of Prince Edward Island, which acts as the voice of the co-operative movement in Prince Edward Island.

Corporation Securities Registration Act

Registrations under this Act totalled 256 in 1985 and 276 in 1984. In 1985 there were 68 certificates of status issued and in 1984 there were 64 issued.

Credit Union Act

The Credit Union Act is administered by the P.E.I. Credit Union League Limited, which also carries out inspections of credit unions. A separate report on credit unions, as compiled by the League, is also presented in the Legislature.

The Credit Union League staff communicates regularly with the Department to keep it informed about the credit union movement.

Licensing Act

All out-of-province businesses carrying on business in this province are required to register under the Licensing Act regardless of whether they have an office or employees in the

province. Such business organizations include banks, trust companies, loan companies, finance companies, chain stores, oil and gas companies, construction companies, manufacturers and generally all corporations not incorporated under the laws of this province and having their head office or chief place of business located outside the province.

	1985	1984
Corporations and businesses registered under this Act	1,881	1,893

Partnership Act

The business names of sole proprietorships and partnerships are registered under the Partnership Act as well as the trade names of corporations.

	1985	1984
Declarations of proprietorships, partnerships and trade names filed during the year	543	527
Dissolutions Filed	138	84

Securities Act

The Securities Act regulates the sales of securities to the public and provides for the licensing of brokers and salesmen.

The following registrations and filings were made under the Act:

	1985	1984
Licenses issued		
- resident salesmen	55	47
- non-resident salesmen	19	19
- brokers	29	30
Prospectuses registered	310	285
Prospectus amendments registered ..	40	47
Certificates of exemption from full prospectus requirements	68	75

Revenue

The Corporations Division collects fees under the various statutes it administers with revenue expected for the fiscal

year ending March 31, 1986 of \$412,000. Revenue for the fiscal year ending March 31, 1987 will be about the same unless fee schedules are revised.

Other

Corporations Division staff spend a significant amount of time responding to inquiries from the public as the information filed in the Division is public information. Requests for information about corporations, co-operatives, partnerships, or other matters come from the legal and accounting professions, other government departments, police authorities, businessmen, bankers and other financial institutions and the public at large.

Inter-Government Conferences

The Director of Corporations or the Corporations Officer attended the 1985 Annual Conferences of the Canadian Securities Administrators, the Administrators of Co-operative and Credit Union Legislation and the Canadian Corporation Law Administrators.

These meetings are invaluable as there is much knowledge to be gained from administrators in the larger provinces where the various administrators specialize in the administration of securities law, company law, etc. In the smaller provinces such specialization is not practical for financial reasons.

These administrators' conferences are useful for exchanging information and developing uniform policies to ease the burden on business organizations which often operate in several provinces in Canada.

Personnel

Director - Edison Shea
Corporations Officer - Merrill Wigginton
Administrative Assistant - Sheila MacNevin
Secretary - Kay Constable
Secretary - Norma MacMillan

CONSUMER SERVICES DIVISION

A. Acts Administered

The Consumer Services Division of the Department of Justice is responsible for the administration of the following laws:

Auctioneers Act	**
Bills of Sale Act	
Business Practices Act	
Cemeteries Act	**
Charities Act	**
Collecting Agencies Act	**
Conditional Sales Act	
Consumer Protection Act	**
Consumer Reporting Act	**
Direct Sellers Act	**
Prearranged Funeral Services Act	
Sale of Goods Act	
Part X, Bankruptcy Act	*
Tax Rebate Discounting Act	*

* - Federal Statute

** - License or Registration Requirement

In the 1985 Session of the P.E.I. Legislature, amendments were made to the Consumer Protection Act which will provide for disclosure of the terms and conditions of residential mortgages. As well, the Act now permits variable rate loans and mortgages.

Effective December 1, 1985, the Regulations dealing with licenses issued under the provisions of the Direct Sellers Act, Collecting Agencies Act and Consumer Reporting Act were amended. These amendments now enable the businesses affected by these statutes to obtain a license for a two year period. As a consequence, the applicable fees have been changed as well. The licenses will now expire two years from the date of issue, rather than the end of each May.

B. Program Statistics and Comments

1. LICENSING AND REGISTRATION:

	1985	1984
a) Direct Sellers Licensed	346	217
b) Collection Agencies Licensed..	4	4
c) Consumer Reporting Agencies Licensed	4	3
d) Auctioneers Licensed	37	31

The 59% increase in the number of Direct Sellers licenses is a result of the two new vacuum cleaner distributors who commenced operations in the province in early 1985. These companies have a high staff turnover which accounts for the large increase in the number of licenses being issued.

2. CONSUMER COMPLAINTS AND INQUIRIES:

a) Complaints:		1985	1984
i)	Motor vehicle sales & repairs..	150	199
ii)	Home construction & renovations	24	41
iii)	Appliances - sales & service..	44	115
iv)	Mail order/direct sales.....	163	108
v)	Collections/credit.....	63	143
vi)	Financial/debtor problems.....	110	74
vii)	Other.....	481	459*
TOTAL.....		<u>1035</u>	<u>1139</u>

* This figure includes ninety-five (95) telephone complaints received in December, 1984, concerning problems with the cabbage patch look alike dolls.

b) Inquiries:		1985	1984
TOTAL.....		<u>1236</u>	<u>1217</u>

The increased activity in Direct Selling has also resulted in a sizeable increase in the number of consumer complaints involving direct sales transactions. It would appear that consumers are continuing to expect and insist on better quality durable goods, which has accounted for the reduction in the number of complaints involving motor vehicles and appliances. As well, the number of complaints regarding service on these products has shown a substantial reduction.

3. ORDERLY PAYMENT OF DEBTS PROGRAM:

		1985	1984
a)	Funds Disbursed to Creditors..	\$135,635.	\$136,418.
b)	Debtor Interviews & Reviews...	102	121

In 1985, eight new Consolidation Orders (new files) were issued as compared with thirteen in 1984. Twenty-three clients retired their debts in full during 1985 for a net reduction in active paying clients. As well, there was a 26% decrease in the number of consumer bankruptcies in P.E.I. for the first nine months of 1985.

C. Consumer Education & Information

During 1985, the staff of Consumer Services spoke to fourteen different groups and educational institutions. These range from Womens Institute, Holland College, High Schools and pre-retirement courses across the province.

D. Personnel

Director - Eric Goodwin
Secretary-Receptionist - Marlene Hughes

The offices of consumer Services have relocated to the first floor of the Sullivan Building on December 31, 1985. On that date, the telephone system was also transferred to the Department of Justice main switchboard.

SUPERINTENDENT OF INSURANCE

Insurance

	1985	1984
Companies registered and licensed.....	249	243
Applicants examined	121	106
Insurance agents' licenses issued.....	278	263
Insurance adjusters' licenses issued....	37	33

COMMENTS:

The mandatory automobile accident benefits which came into force January 1, 1984, appear to be working well. Worthwhile benefits are provided with only a small increase in cost.

Automobile insurance premiums were up in 1985 and a further increase is expected in 1985. The market has become very difficult especially in the placing of liability cover. Real concerns have been raised in connection with cover for risks, municipali-

ties, schools and hospitals. It seems, however, that most entities have been able to obtain cover, but the cost has increased very substantially. A similar situation exists across Canada and United States as well as many other parts of the world. The Province of Ontario has established a Task Force with very broad terms of reference to study the matter and make recommendations for action. As most of the insurance head offices are located in Ontario, any action there will have influence and impact in the other provinces. This office is monitoring the situation closely.

The Canadian Council of Superintendents of Insurance in conjunction with the Insurance Bureau of Canada and other segments of the industry have been planning the establishment of a Compensation Fund for all of Canada. This would indemnify in the case of an insolvent insurer and is funded by an assessment on all registered insurers. It is expected the Plan will be in operation during 1986.

The Facility Association, which is designed to cover the high automobile risks, continues to work well and no major problems have been encountered.

The Third Party Compulsory Liability on automobile policies has increased to \$200,000 on January 1, 1986. This is now in line with the other provinces.

The detailed report of the Superintendent for 1984 is provided separately and licensing statistics for 1985 are set out above. It is interesting to note the constant progress being made by the Prince Edward Island Mutual Fire Insurance Company, and the Company paid a dividend on the basis of the 1983 results, and is now considering a further dividend to policyholders. The Company is well managed and last year celebrated the 100th Anniversary of its founding.

The Practice of examining applicants for agents' licenses continues for all classes, and we believe this has greatly improved the calibre of agents and at the same time reduced the turnover which was so prevalent at one time.

All persons adjusting insurance claims in the Province must hold a valid license.

The Superintendent attends two national meetings of the Council along with some Committee meetings on a regional level. These meetings are important to the welfare of the industry, and the people involved therein. The Association is now known as the "Canadian Council of Superintendents of Insurance", and includes the Federal Superintendent of Insurance.

Premium and Fire Prevention Tax

	1985	1984
Premium tax collected.....	\$ 979,931.72	\$ 945,660.03
Fire prevention tax collected.....	81,846.21	85,118.10
Totals	<u>\$1,061,777.93</u>	<u>\$1,030,778.13</u>

COMMENTS:

Premium tax at the rate of 2% is collected on all insurance premiums, except fraternal and marine, written in the province. The Fire Prevention tax, which is assessed at 3/4 of 1% of the total fire premium, is basically designed to defray expenses of the Provincial Fire Marshall's Office. The increase in Premium Tax is due to an increase in premium income.

Official Trustee

The services of the Official Trustee continue to increase and during the year, there were 110 active accounts. Funds held in trust fluctuate and averaged \$318,000 over the period. Excess funds are invested in Deposit Certificates with the Minister of Finance, and at the end of the year amounted to \$334,000.

The accounts are reviewed annually by the Auditor General and his report is available elsewhere.

We continue to enjoy a close working relationship with the Division of Aging in the Department of Health and Social Services, and as a result, we are able to have better control of the assets of patients or guests who are considered incompetent. The role of the Official Trustee is increasing quite substantially as all persons admitted to government homes that are considered incompetent are declared before admission. He is also called up to represent estates of deceased persons in certain actions, and, of course, continues to act as Administrator of Estates when no one else is available or qualified. The Official Trustee is also appointed Guardian in some situations, especially in the case where emergency surgery is considered necessary.

The Advisory Committee is consulted from time to time as the need arises.

Real Estate

The Superintendent of Insurance also administers the Real Estate Trading Act. Sales by agents during 1984 increased to more than 61 million dollars. Another good year is expected in 1985. There have been a number of new constructions not only in residential but in rental accommodations as well. Sales commissions for 1984 amounted to almost 3 million dollars. An unknown number of properties are sold privately and those, of course, are not included in the figures given.

Two hundred and thirty-one agents and salespersons were licensed in 1985, which is an increase over the previous year. New applicants must be bona fide residents and are required to pass a written examination which is written in this office by appointment. All salespersons are bonded. A total of one hundred examinations were written in 1985.

Personnel

Superintendent of Insurance - Milton B. Fitzpatrick
Secretary - Marlene Phelan

LEGAL SERVICES DIVISION

Legal Services are provided to the Premier's Office, Executive Council, Government Departments and some Crown Corporations and Agencies by lawyers employed in the Legal Services Division.

The Division has assigned solicitors to serve specific departments of Government in order to provide a degree of specialization which would not otherwise be possible.

The Legal Services Division represented Government in 1985 on litigation before the various divisions of the Supreme Court of Prince Edward Island. It otherwise represented Government before administrative tribunals both federally and provincially and assisted in drafting of new legislation. It provided legal opinions and advice to Government on the full range of matters involving Government.

Personnel

Director of Legal Services - Charles P. Thompson
Departmental Solicitor - Judith M. Haldemann
Departmental Solicitor - Linda M. Gaudet
Departmental Solicitor - Vacant
Legal Secretary - Deborah L. Gillespie

CROWN ATTORNEYS

There are three Crown Attorneys responsible for prosecuting all criminal cases under the Criminal Code of Canada and provincial statutes. The Crown Attorneys' Office is located in the Sir Louis Henry Davies Law Courts Building and in the Court House in Summerside.

Personnel

Director of Crown Attorneys - Richard B. Hubley
Crown Attorney - Darrell Coombs
Crown Attorney (Summerside) - David O'Brien
Secretary - Linda Peters

CORRECTIONS DIVISION

Staffing

The Division is administered by a Director with part-time secretarial services.

The name of Sleepy Hollow Correctional Centre was changed to Provincial Correctional Centre by Order of the Lieutenant Governor In Council, effective September 1, 1985. It employs 52 full-time and two part-time permanent staff.

Prince County Jail employs six full-time permanent staff.

Kings County Jail employs three full-time permanent staff.

Staff at all three institutions are supported by relief employees, when required.

Two correctional officers retired to pension during the year, one resigned to accept other employment and one resigned to become a Homemaker. This represents a staff turnover rate of 6.5%, compared to 4% in 1984.

Statistics

The following is a statistical table of the number of prisoner admissions to the Correctional Centre and each jail during the year under the categories of (1) Lock-up (police arrestees held prior to court appearance, federal parole violators, immigration detainees); (2) court remands and (3) sentenced. Only status upon original admission is counted. Prisoners who change from lock-up to remand or sentence status or from remand to

sentence status without release are not re-counted under their new category. All young offender admissions are shown as lock-up, even though they may have been remand or sentenced status when received. This was done to ensure proper record destruction, as required by law, when due. A prisoner transfer between institutions does not count as a new admission at the receiving institution.

TABLE "A"

	LOCK-UPS		REMAND		SENTENCED	
	1985	1984	1985	1984	1985	1984
Provincial Correctional Centre						
Adult						
Male	1136	1227	62	83	499	717
Female	50	64	7	1	23	32
Young Offender						
Male	20	3	0	0	0	0
Female	1	0	0	0	0	0
TOTAL	1207	1294	69	84	522	749
Prince County Jail						
Adult						
Male.....	551	656	47	39	174	189
Female	38	35	2	1	3	2
Young Offender						
Male	46	5	0	0	0	0
Female	0	0	0	0	0	0
TOTAL	635	696	49	40	177	191
Kings County Jail						
Adult						
Male.....	245	208	6	6	208	50
Female	5	4	0	0	2	2
Young Offender						
Male	24	7	0	0	0	0
Female	1	0	0	0	0	0
TOTAL	275	219	6	6	210	52
Total 2 Jails + Provincial Correctional Centre						
Adult						
Male.....	1942	2091	115	128	881	956
Female.....	93	103	9	2	28	36
Young Offender						
Male.....	90	15	0	0	0	0
Female.....	2	0	0	0	0	0
TOTAL.....	2127	2209	124	130	909	992

Of the 124 remand admissions during the year, 82 eventually changed to sentenced status without release. They do not appear in the sentenced column of Table "A".

The number of prisoners held before transfer to a federal penitentiary was 34. Of these, 27 were sentenced by Prince Edward Island courts, seven were federal parole violators. The corresponding numbers in 1984 were 25 and 13.

There were no prisoner deaths in the province during the year. Staff dealt with four genuine suicide attempts. There were numerous attention getting acts resembling attempted suicide which staff handled capably.

There was one escape from within an institution during the year, with one prisoner involved. There were four runaways from outdoor/community activities. These numbers are identical to 1984, except that four prisoners were involved in the escape from within an institution in 1984, compared to one in 1985.

The following is a statistical table of the number of days served by prisoners in 1985 in each jail and the correctional centre under the categories of (1) Lock-up (2) remand and (3) sentenced. Again, young offender days are shown under lock-up, even though the majority were on remand or sentenced status.

TABLE "B"

	LOCK-UPS DAYS		REMAND DAYS		SENTENCED DAYS	
	1985	1984	1985	1984	1985	1984
Provincial Correctional Centre						
Adult						
Male	1540	1333	1933	1571	20585	21230
Female	50	64	57	1	377	475
Young Offender						
Male	20	11	0	0	0	0
Female	21	0	0	0	0	0
TOTAL	<u>1631</u>	<u>1408</u>	<u>1990</u>	<u>1572</u>	<u>20962</u>	<u>21705</u>
Prince County Jail						
Adult						
Male.....	572	666	675	497	4032	3590
Female	38	36	3	2	3	5
Young Offender						
Male	926	59	0	0	0	0
Female	14	0	0	0	0	0
TOTAL	<u>1550</u>	<u>761</u>	<u>678</u>	<u>499</u>	<u>4035</u>	<u>3595</u>
Kings County Jail						
Adult						
Male.....	253	210	49	37	1827	514
Female	5	4	0	0	6	4
Young Offender						
Male	268	69	0	0	0	0
Female	1	0	0	0	0	0
TOTAL	<u>527</u>	<u>283</u>	<u>49</u>	<u>37</u>	<u>1833</u>	<u>518</u>
Total 2 Jails + Provincial Correctional Centre						
Adult						
Male.....	2365	2209	2657	2105	26444	25334
Female.....	93	104	60	3	386	484
Young Offender						
Male.....	1214	139	0	0	0	0
Female.....	36	0	0	0	0	0
TOTAL.....	<u>3708</u>	<u>2452</u>	<u>2717</u>	<u>2108</u>	<u>26830</u>	<u>25818</u>

The per diem billing rate for holding a prisoner for the year September 1, 1985 to August 31, 1986 is \$86.75, compared to \$84.00 for the previous year September 1, 1984 to August 31, 1985. This is an increase of 3.3%.

Volunteers from several religious groups and denominations, as well as many other organizations, associations and individuals, gave freely of their time to be involved in various ways in the operation of the Correctional Centre and its programs. To these groups and individuals, as well as government departments and divisions also involved, the Department is extremely grateful.

LEGISLATIVE COUNSEL

In the 1985 Session of the Legislative Assembly 47 public Acts and 4 private Acts were enacted. Substantial progress has been made in the management of the data base of the statutes. The statutes of the province are now available on a data base in the office of the Queen's Printer and will be updated with much greater speed and facility than was previously the case.

The 1985 bound volume has already been printed and distributed and the looseleaf update is in the course of printing.

It was determined early in 1985 that the regulations of the province should also be captured on the storage capacity of the typesetter at the Queen's Printer. This task involved rekeyboarding the whole of the regulations together with amendments since 1981, proofreading and typesetting the material.

For their many hours of labour on this exercise, appreciation is extended to the staff of the office of the Legislative Counsel and the Queen's Printer.

It is anticipated that an updated consolidation of the regulations to January 1, 1986 will be available in March.

The Legislative Counsel represented the province at various meetings of the Uniform Law Conference and the Canadian Law Information Council.

Personnel

Legislative Counsel - M. Raymond Moore
Secretary - Marina G. Bears
Secretary - Leona F. Nicholson

CHARLOTTETOWN & SUMMERSIDE REGISTRY OFFICES

The division's responsibilities are:

- to administer the Kings, Queens, and Prince County Land Registry Offices;
- to maintain a current computer record of all registered land owners on Prince Edward Island, both numerically and alphabetically;
- to maintain and keep current a series of property ownership maps for Prince Edward Island;
- to organize, maintain, and boundary survey an inventory of provincially owned crown property;
- to operate a map library which sells whiteprint copies of property maps, national topographic series maps, hydrographic charts, and provide customer custom whiteprinting services;
- to operate a co-ordinate survey monumentation system and provide advice and/or surveys for government departments;
- to provide assistance and response to all land-related inquiries coming from government agencies, private enterprises, and the public.

For Year Ending 31 December 1985

Documents Registered	14,125
Survey Plans Filed	335

June, 1985 marked the retirement of Polly Mullin from the Charlottetown Registry Office. Mrs. Mullin had fifteen years service with the P.E.I. Government.

Personnel

Registrar of Deeds (Charlottetown) - Frances MacDonald
Assistant Registrar - Ruby Watts
Clerk - Molly Armstrong
Registrar of Deeds (Summerside) - Eileen Gaudet
Assistant Registrar - Shirley Rogerson

REPORT OF THE
OFFICE OF THE PUBLIC DEFENDER
PROVINCE OF PRINCE EDWARD ISLAND

April 1, 1984 to March 31, 1985

This was the twelfth year of the public defender program in Prince Edward Island. The service is cost shared under a Federal-Provincial agreement which applies in all provinces.

Objective

The objective of the program is to ensure equality before the criminal law throughout Canada by making lawyers available to individuals who would otherwise be unable to afford legal representation. The program is further aimed at encouraging the development of minimum standards in criminal legal aid.

Eligibility

The legal aid agreement between Canada and the province specifies that eligibility for legal assistance is to be determined by a flexible means test. In this province the test is conducted by a staff lawyer who must weigh the seriousness of the legal proceedings and then consider the applicant's present means to obtain counsel through his own resources.

How Service is Obtained

To obtain service, the applicant must contact a staff lawyer in the same manner as he would a private practitioner. Contrary to a common misconception, the courts do not assign cases to legal aid staff lawyers. Although legal aid has become an integral part of the justice system, the program is run independently from the courts.

Choice of Counsel

Legal services are provided by three staff lawyers. Private counsel are retained in a small percentage of cases where a scheduling problem or a conflict prevents a staff lawyer from acting. It is only in murder cases that the applicant is given the choice of being represented by private counsel.

Offices

Full-time offices are maintained at the Law Courts Buildings in both Charlottetown and Summerside. The Summerside office was increased to a full-time basis in May of 1982. On court days, staff lawyers also travel to Alberton, Souris and Georgetown, if there are requests for assistance.

Cost-Sharing Formula

The federal-provincial cost-sharing agreement has been re-negotiated every few years. The same cost-sharing formula applies across the Country but the level of federal contribution varies depending on provincial per capita expenditures and other complex factors. Canada's share of criminal legal aid expenditures in this province has consistently been in the range of 85 to 90 per cent. For the Country as a whole, Canada's contribution has been in the range of 45 to 55 per cent since 1973.

Young Offenders

In another procedural change under the Young Offenders Act, cases in the young offender age category were shifted from the Supreme Court to the Provincial Court level. The Provincial Court has established regular sittings at Souris, Georgetown and Alberton.

The Young Offenders Act, which was proclaimed in April 1984, placed further demands on the resources of the program. Service was provided previously to the same age group under the Juvenile Delinquents Act. However, the new Act, which is aimed at holding young offenders more accountable for their behaviour, also places much greater emphasis on due process. The Act obliges authorities to advise young offenders of their right to counsel at all stages of the proceedings from arrest to trial.

These changes have impacted on the legal aid program in several ways, including:

- an increased number of cases;
- more appearances in out-of-town courts;
- procedures under the Young Offenders Act are more time consuming in each case;
- on average, more court appearances are required to clear each case.

An even greater impact on demand may be anticipated when the sixteen and seventeen year age category is included.

All legal aid services under the Young Offenders Act will be cost-shared by Canada on terms similar to the present criminal legal aid agreement.

Cases Completed

The following cases were completed during the year. The definition of a case varies from province to province. In this province each separate charge is counted as a separate case. An applicant may have several charges arising from one incident. Likewise, charges from several incidents are often dealt with by the court at one time. In either situation the number of cases is equal to the number of charges. An appeal is also recorded as a separate case. Applications involving cases carried over from previous year are not recorded in this report until the year in which the file is completed. In any instance where the same applicant requests assistance more than once within a year, an additional application is recorded and each charge on that occasion is recorded as a separate case. During the past year, 38 individuals requested assistance on more than one occasion.

Number Completed (1982-83) (1983-84) 1984-85

Unlawful homicide (including motor vehicle deaths)	2	4	4
Matters under the Young Offenders Act	22	12	82
Robbery	6	4	13
Theft, break & enter, possession of stolen goods ...	439	309	452
Fraud & false pretences	82	118	99
Drunk & impaired driving	102	105	128
Other motor vehicle offences.....	27	15	23
Escape & unlawfully at large..	6	12	20
Cause disturbance.....	36	27	30
Assaults (including sexual assaults).....	61	84	88
Resisting arrest	12	12	10
Arson	6	4	-
Property damage	83	44	44
Breach of probation	14	23	18
Dangerous & prohibited weapons.....	22	15	12
Narcotics	22	46	31
Others	29	29	52

Summary of Legal Aid	(1982-83)	(1983-84)	1984-85
Number of files (separate applications) completed and closed during the year.....	510	526	625
Number of cases (separate charges or appeals) completed in the above files.....	971	863	1106
Cases where private counsel participated at some stage...	9	15	16
Percentage of cases handled in whole or in part by private counsel.....	0.9%	1.7%	1.4%
Number of private counsel who participated.....	7	8	9
Cost of service rendered by private counsel.....	\$10,908.80	\$17,169.21	\$11,576.13
Number of Applications by Region	(1982-83)	(1983-84)	1984-85
Charlottetown.....	281	301	347
Summerside.....	176	167	206
Alberton.....	24	17	18
Georgetown.....	20	37	41
Souris.....	9	4	12
Age of Recipients			
16 - 19 years	44%	34%	33%
20 - 25 years	25%	32%	34%
over 25 years	31%	34%	33%
Total Criminal Legal Aid Expenditures	\$132,695.00	\$150,766.87	\$156,506.17

**FIFTH ANNUAL REPORT
Prince Edward Island Family Legal Aid
April 1, 1984 to March 31, 1985**

This is the fifth annual report of the family legal aid program in Prince Edward Island. The service was initiated through federal start-up money in 1980 and continued by the province since then in conjunction with the criminal legal aid program.

Program Structure

The family legal aid program is an extension of the public defender program which has provided cost-shared legal aid in criminal matters in this province since 1973. Legal service for both programs is provided by the full-time staff of three lawyers and one secretary. Administrative and accounting services are provided by the Provincial Justice Department.

The program is administered by the Director of Legal Aid (a staff lawyer), who reports to the Deputy Minister of Justice.

Objectives

The objective of funding legal aid in family law is similar to the stated objective of criminal legal aid - to provide access to the law. In particular, the objective is to enable individuals to exercise and protect their basic rights under family legislation. The program attempts to make free legal services available to eligible persons to the extent that a reasonable man of modest means would pay his own lawyer if faced with the same legal problem. This is the stated objective of legal aid throughout Canada.

The achievement of that objective is subject to staff and budgetary limitations. The policy of restraint and cutbacks in government programs was already in place when this program was being developed. Consequently, this province has been unable to achieve the level of service provided in provinces where family legal aid was fully established during the period of expansionary growth in social spending in the early to mid-70's.

Eligibility

Eligibility is restricted to persons already on social assistance or who might be eligible for such assistance if required to pay the probable costs of representation by private counsel.

Priority for assistance is given to applicants whose legal problem involves dependent children.

Legal aid may be refused in any situation where a reasonable individual of modest means faced with a similar problem would probably not pay from his own pocket to obtain the assistance requested.

Experience to date has shown that the greatest restriction is the lack of staff to provide assistance even where financial eligibility is established.

Coverage

Coverage is limited to matters within the jurisdiction of the Family Division of the Supreme Court. Generally, this involves the Divorce Act, Family Law Reform Act, and the Family and Child Services Act. Priority is given to any application under the latter Act because of the potentially serious consequences involved in the outcome of each case. Legal representation is considered essential in child welfare cases because the opposing party is the State.

Involvement of Private Counsel

Legal aid staff lawyers may represent only one party in any dispute. The same restriction applies to law firms in private practice. In some cases more than one party seeks legal aid. The program has a small budget to service those cases by hiring private counsel on a tariff basis.

Legal Aid in Other Provinces

Before the introduction of family legal aid in this province, a Prince Edward Island resident requiring legal representation in another province would not be eligible for the free assistance available to residents of that province. Under an inter-provincial agreement, residents of Prince Edward Island now have the advantage of obtaining legal aid in any province of Canada, provided similar service would be covered for a non-resident in this province.

The Number of New Files Opened

There were 179 new files opened in 1984/85. This number includes only those cases where legal action was commenced through correspondence, negotiation, or court action. The figure does not include telephone and office consultations where advice was given without opening a correspondence or litigation file.

Family cases tend to be difficult to settle quickly. Most cases take several months to resolve and in some, work proceeds beyond the year in which the file was opened. By nature, the practice of family law differs from other areas of litigation in that the circumstances of the litigants may continue to change and bring about new difficulties. Consequently, the capacity of the program to take new cases may be less in each successive year.

Telephone Inquiries

The provision of summary legal advice by phone is an important aspect of the program. The majority of applicants call in the initial stages of family break-ups. Typically, the caller will state "I just want to know my rights". Early advice and appropriate referrals to other agencies may provide reassurance to the callers and enable them to resolve their own difficulties before they lead to costly litigation.

During the past fiscal year, statistics for the Charlottetown office indicate that approximately 350 people received telephone advice in family matters and an additional 265 persons requested advice in civil matters other than family law. Persons for whom a correspondence or litigation file was opened during the 1984/85 fiscal year are not included in those numbers.

Family Legal Aid Activity	(82/83)	(83/84)	84/85
1. NUMBER OF PERSONS FOR WHOM NEW FILES WERE OPENED.....	241	202	179
2. TYPE OF APPLICATION			
Matrimonial (Divorce Act & Family Law Reform Act)..	87%	83%	84%
Family & Child Services Act.....	9%	13%	12%
Other.....	4%	4%	4%
3. NUMBER OF PERSONS WHO REQUESTED TELEPHONE ADVICE WHERE NO FILE WAS OPENED - (Charlottetown Office only)			
Family.....	N/A	287	350
Civil.....	N/A	182	265

	(82/83)	(83/84)	84/85
4. REGIONAL DISTRIBUTION OF SERVICE		No. of Files	
Charlottetown.....	150	115	111
Summerside.....	91	87	68
5. RATIO OF MALE TO FEMALE CLIENTS			
Male.....	13%	15%	16%
Female.....	87%	85%	84%
6. NUMBER OF CASES WHERE PRIVATE COUNSEL ACTED THROUGH LEGAL AID.....	7	4	6
7. NUMBER OF INTER-PROVINCIAL REQUESTS			
To other provinces.....	10	7	3
From other provinces.....	11	8	4
8. TOTAL LEGAL AID EXPENDITURES			
Criminal & Family.....	\$161,700.00	\$184,711.57	\$202,948.93

PROBATION, FAMILY COURT AND YOUNG OFFENDERS SERVICES

General

At year's end field staff of the Division consisted of two Family Counsellors and 11 Probation Officers. Implementation of the Young Offenders Program resulted in five additional Probation Officers being hired during the year. Two Probation Officers serve as Senior Probation Officers performing supervisory duties in addition to case load responsibilities. 1985 saw the opening of a full-time probation office with one staff member in West Prince located at the West Prince Regional Services Centre in O'Leary. The Young Offenders Program generated a great deal of new activity for staff which must be considered transitional and developmental in nature until the program becomes fully developed.

Pre-Sentence/Pre-Disposition Reports

During 1985 Probation Officers conducted assessments and investigations for and submitted 116 pre-sentence reports in response to requests from both Provincial and Supreme Court. This compared with 108 reports in 1984, and 111 reports in 1983. There were 150 pre-disposition reports prepared on Young Offenders (aged 12-17 inclusive) for Youth Court, of these 50% involved 12-15 year olds.

Probation Supervision

On January 1, 1985 there were 506 individual adults (then 16 years of age and over) under the supervision of Probation Officers in the Province with 646 new cases added during the year. This compares with 501 new cases added during 1984 and 480 cases in 1983. In addition there were 234 new young offender cases brought under supervision.

On December 31, 1985, 621 individual adults were under supervision of Probation Officers. This reflects an increase of 112 individuals over December 31, 1984. At year's end there were also 212 young offender cases under active supervision.

Community Service Orders

Provincial and on occasion Supreme Court Judges continued to use as an integral part of their sentencing practices, the concept of community services work which has expanded since its initiation in Prince Edward Island in 1977. Basically the Court requires an offender whether in lieu of or in addition to some other penalty to perform voluntarily some form of community service or work as a condition of a probation order. Probation Officers arrange appropriate service taking into consideration any strengths or talents an offender may have and supervise activities as well as assessing its quality. The prime consideration in the community service concept is to place responsibility on the offender to restore, at least in part, the harm done whether for the victim or the community at large.

In appropriate situations an offender may pay to the Court an amount for each hour of uncompleted work which goes toward a fund administered by the Provincial Court Judges who in turn consider applications from non-profit community groups for contributions from the Community Service Fund.

Restitution

Although restitution has been a part of sentencing in this Province for more than 10 years it has received increased emphasis in recent years arising in part out of increased concern for victims of crime.

Essentially the offender is required as a condition of probation to pay to the Clerk of the Court an established amount. Probation Officers oversee and supervise payment acting in an enforcement capacity wherever appropriate.

Temporary Absence Program

Staff of Probation Services assessed and investigated 102 applications from sentenced inmates of the Provincial Correctional Centre, Prince and Kings County Jails, under the regular Temporary Absence Program. Of these the Department of Justice authorized 50 temporary absences involving the selected release without escort of 49 individuals. This compares with 59 releases involving 49 individuals in 1984. Of the 50 releases four were for purposes of employment or paid training; three for purposes of education; 24 for purposes of treatment (15 alcohol and nine medical) and 19 for rehabilitative or humanitarian reasons.

No violations of temporary absence privileges were recorded.

The above releases do not include releases where inmates were escorted by Correctional Officers, Probation Officers or under the general supervision of Community Supervisors in a voluntary capacity, nor do they include releases by the National Parole Board on either day or full parole. As well, these releases do not include inmates released under the Christmas Temporary Absence Program outlined below.

Christmas Temporary Absence

The Christmas Temporary Absence Program established in 1971 where sentenced inmates in provincial institutions were provided the opportunity of spending some time with family and/or friends was continued in 1985.

Of the 66 inmates that would have been held under a warrant of incarceration in the Provincial Correctional Centre, Prince and Kings County Jails over Christmas, 22 were provided the opportunity of being released for varying periods of time (10-48 hours). Three inmates violated conditions of their release by either consuming alcohol or returning late.

Young Offenders Program

The Young Offenders Act (Canada) replaced the Juvenile Delinquents Act, when it came into effect on April 2, 1984. The Act has generated significant changes in how young offenders are dealt with in this Province. In April 1985 the Act raised the upper age of young or juvenile offenders to under 18 years instead of the former age of under 16.

The Department of Justice assumed responsibility for the overall administration of the Young Offenders Act within the Probation and Family Court Services division in April 1984. The Director of Probation and Family Court Services serves as Provincial Director under the Act.

While the legislation has required many changes, the most significant requirement is that the province must develop separate young offenders custody and residential facilities. In November 1984 the Minister of Justice announced that a new young offenders facility would be built in the Summerside area. Program plans for the proposed multi-purpose facility will be considered by Government early in the new year.

An open custody facility will open in Summerside early in the new year to serve as a temporary measure. The province will continue to use a range of facilities including those available in Nova Scotia and New Brunswick until a permanent facility is established in the province.

With the exception of the complex custody question, implementation to date has been demanding but without serious difficulty. While the Act will have obvious financial, staff and program demands, it can be seen as a challenge and opportunity to develop meaningful province-wide programs for young people in trouble with the law.

Family Court Services

Family Counsellors continued to provide support services for the Family division of the Prince Edward Island Supreme Court. These services are primarily counselling, investigative and supervisory in nature.

More specifically these responsibilities include:

- (a) Performing intake procedures at the Family Court, assessing and screening cases, and providing an information and counselling service to individuals preparing for the court process;
- (b) Conducting investigations in custody, support and related matters for the preparation of reports for Family Court;
- (c) Supervising and enforcing orders made by the Family Court;
- (d) Marital counselling in crisis situations that may or may not require judicial attention;
- (e) Performing an educational public relations role in interpreting the functions of Family Court to individuals and community organizations.

An increasing new demand is dealing with referrals by examining the possibility of out-of-court settlements by performing a mediation function or service.

JUDICIAL DIVISION

FUNCTION AND ORGANIZATION

This division is responsible for the design and maintenance of an administrative structure that meets the needs of all courts throughout Prince Edward Island. Its primary and continuing objective is to make appropriate and effective use of personnel and other resources to develop and manage a comprehensive court services program throughout the Province.

The overall strength of personnel in the division remains at 28 with the distribution of personnel being as follows:

	Prothonotary	Legal Services Officer	Judicial Clerk 1	Judicial Clerk 2	Judicial Clerk 3	Court Stenographer	Sheriff	Clerk & J.P.(part-time)	TOTAL
Charlottetown.....	1	5	1	1	3	6	1	-	18
Summerside.....	-	1	-	1	1	2	1	-	6
Alberton.....	-	-	-	-	-	-	-	-	1
Georgetown.....	-	-	-	-	1	-	1	-	2
Souris.....	-	-	-	-	-	-	-	1	1
	1	6	1	2	5	8	3	2	<u>28</u>

The personnel provide the courts with support services, some of which are as follows:

1. GENERAL ADMINISTRATION

- budget and expenditure control
- personnel transactions
- equipment supply, purchases, etc.

2. JUDICIAL ADMINISTRATION

- taxation of costs on solicitor-client and party-party basis
- bankruptcy and discovery
- supervision over court officers
- Justices of the Peace.

3. COURT RECORDS

- registration and maintenance.

4. DOCKETING AT SUPREME COURT LEVEL.
5. STENOGRAPHIC AND SECRETARIAL AND CLERK OF THE COURT.
6. SHERIFF SERVICESS
 - jury impanellment
 - process servers
 - execution of court orders
7. FINANCIAL RECORD MANAGEMENT
 - approximately \$3 million annually at both court levels.

Supreme Court - Estates Division

566 petitions were filed during the year 1985, resulting in 521 court grants on behalf of Estates, with a total probate value of \$29,477,405.68.

Estates Division fees collected and deposited to the credit of the Minister of Finance for the Province totalled \$89,548.90.

Supreme Court - Family Division (1985)

572 files were opened. These included:

- 233 Divorce petitions
- 58 Adoption petitions
- 60 Weddings
- 48 Change of Name applications
- 62 Family Law Reform Act applications
- 52 Family and Child Services Act applications
- 59 Maintenance Enforcement applications
- 10 Others

\$301,835.89 was the amount of maintenance collected as opposed to \$231,467.92 in 1984.

Supreme Court - General Division

Criminal - Non-Jury

Summary Conviction offence appeals to a single judge

- 47 scheduled for hearing
- 25 were abandoned
- 22 heard with decision given in 19 and three reserved for decision
- 13 were filed but not scheduled for a hearing in 1985

Indictable Offence trials before a single judge

- 23 scheduled for hearing and disposed of
- 13 were filed and schedule for completion in 1986 as sentencing, trial, etc.

Civil Non-Jury

- 35 set for hearing and settled before trial
- 63 set for hearing and decisions given

Jury Trials

- 18 Criminal cases were set for jury trial in 1985 and disposed of as follows:
 - 13 re-elected to judge alone
 - 2 charges withdrawn
 - 1 warrant of arrest issued
 - 1 adjourned until 1986
 - 1 jury trial held
- 9 Civil cases were set for jury trial in 1985 and disposed of as follows:
 - 7 adjourned to 1986
 - 1 tried by judge alone
 - 1 settled before trial

Small Claims

- 1,485 new files opened
- 30 set for hearing and settled
- 4 trials started but adjourned
- 63. trials and decisions given

Supreme Court- Appeal Division

- 44 Civil appeal cases were scheduled for hearing in 1985
- 12 were abandoned
- 32 were heard with decisions given in 30 and 2 still reserved for judgment at end of year
- 31 Criminal appeal cases were scheduled for hearing in 1985
- 8 were abandoned
- 23 were heard with decisions given in 22 and 1 still reserved for decision at end of year

Other Documents Filed	1985
Judgments	1,119
Chattel Mortgages	17,724
Conditional Sales	9,646
Book Debts	1,901

General Division fees collected and deposited to the credit of the Minister of Finance for the province totalled \$124,951.88.

Obituary

Chief Justice John P. Nicholson

On February 4, 1977, John Paton Nicholson, citizen, son of Robert and Beatrice, student of W. E. Bentley, eminent lawyer, esteemed jurist, became the fifteenth Chief Justice of Prince Edward Island.

For twenty-two years following his graduation from Dalhousie Law School in 1947 and his call to the Bar the following year, John P. Nicholson was a leading figure in the professional, civic and public life of this province.

He served as President, Secretary and Treasurer of the Law Society and a Vice-President of the Canadian Bar. Renowned as a brilliant Defence Counsel and champion of human rights, he was also for a period of time a gifted Crown Prosecutor in the employ of the Attorney General. In municipal government he sat as a Councillor for ten years and also served as City Solicitor and President of the Federation of Mayors and Municipalities.

He was appointed a Queen's Counsel in 1966 and a Judge of the Supreme Court in 1970 and was appointed Chief Justice of the Court in 1977 where he served with distinction until his sudden death on May 24, 1985.

Supreme Court Appointment

Chief Justice Norman H. Carruthers

Following three years teaching school in Calgary, Alberta, Norman H. Carruthers entered Dalhousie Law School from which he graduated in 1967 with an LL.B. From 1968-1980, Norman Carruthers practised law with the firm of Foster, MacDonald and Carruthers until his appointment as Chief Judge of the Provincial Court in June, 1980.

He was sworn in as the sixteenth Chief Justice of Prince Edward Island on September 6, 1985, and is married to the former Diana Rodd.

Pending Supreme Court Appointment

The Honourable Mr. Justice Frederic A. Large elected to take supernumerary status as of June, 1985 and a replacement has not been appointed to year end.

Provincial Court Appointment

Ralph C. Thompson

In October, 1985, Ralph C. Thompson was sworn in as the Province's second Chief Judge of the Provincial Court following a ten year career as a barrister and solicitor during which time he served as a full-time prosecutor, practising attorney and the final seven years as a member of the Legal Services Division of the Department of Justice.

Provincial Court Fines Collected

	1983	1984	1985
Charlottetown	\$527,583.25	\$672,235.23	\$633,613.23
Summerside.....	278,470.24	305,276.51	334,035.14
Georgetown.....	100,638.58	139,425.40	125,678.76
Souris.....	48,427.49	85,564.09	74,996.50
Alberton.....	102,993.47	126,635.14	110,505.95